

The Honorable Tana Lin

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON, et al.,

PLAINTIFFS,

v.

U.S. DEPARTMENT OF
TRANSPORTATION et al.,

DEFENDANTS.

NO. 2:25-CV-00848-TL

DECLARATION OF THE
MINNESOTA DEPARTMENT OF
TRANSPORTATION IN
SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGEMENT

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2 1. My name is James Cownie. I am an adult over 18 years of age and competent to
3 supply the information in this declaration. I am the Chief Counsel to the Minnesota Department
4 of Transportation (MnDOT). I have held this role for 8 months. Prior to that, I served as Deputy
5 Chief Counsel and in other roles in the Office of Chief Counsel and other legal offices for 25
6 years. I have personally been involved in MnDOT's implementation of the federal NEVI
7 formula program, rollout of electric vehicle charging infrastructure in the state, and MnDOT's
8 response to the February 6 letter as described herein. I submit this declaration on behalf of
9 MnDOT; the information presented in this declaration is known to me personally in my role as
10 General Counsel or based on information made available to me via MnDOT personnel and
11 materials.
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14 2. MnDOT's vision is for a multimodal transportation system that maximizes the
15 health of people, the environment and our economy. MnDOT's originating statute, Minnesota
16 Statutes, section 171.01, and Minnesota's Next Generation Energy Act of 2007, Minnesota
17 Statutes, section 216H.02, (Next Generation Act) set sustainability goals that guide agency
18 work. The Next Generation Act requires Minnesota to reduce greenhouse gas (GHG)
19 emissions statewide to net zero by 2050. Consistent with these goals for decarbonization, the
20 Minnesota 2022 Statewide Multimodal Transportation Plan established a target to reduce
21 annual GHG emissions from the transportation sector by 80% from 2005 levels by 2040.
22 Electric vehicle (EV) adoption was identified as one way to reduce GHG emissions from
23 transportation. To incentivize increased use of EVs and for people to overcome range anxiety,
24 a reliable statewide recharging network is required. . The federal NEVI Formula Program
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1 provides funds for states to strategically deploy fast chargers for EVs along designated
 2 Alternative Fuel Corridors (AFCs) and beyond. This program aims to provide a convenient,
 3 affordable, reliable and equitable public charging network.

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 5 3. Like many states, Minnesota expected the National Electric Vehicle
 6 Infrastructure (“NEVI”) Formula Program established in the Infrastructure Investment and
 7 Jobs Act (“IIJA”) to play a critical role in the State’s ability to transition to electrification of
 8 vehicles. See IIJA, Pub. L. No. 117-58, 135 Stat. 429 (2021).

9 4. The IIJA allocated \$5 billion over federal fiscal years 2022 - 2026 for the NEVI
 10 Formula Program to fund strategic deployment of electric vehicle (“EV”) charging
 11 infrastructure. The Federal Highway Administration (“FHWA”) administers the NEVI
 12 program. Each state is required to submit a State Electric Vehicle Infrastructure Deployment
 13 Plan (“State Plan”) for each fiscal year describing how the state intends to use the NEVI funds.
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15 5. The IIJA further requires the Secretary of Transportation, within ninety (90)
 16 days of the statute’s enactment and in coordination with the Secretary of Energy, to develop
 17 “guidance for States and localities to strategically deploy electric vehicle charging
 18 infrastructure” consistent with the NEVI Formula Program provisions of the IIJA (“NEVI
 19 Formula Program Guidance”). FHWA issued NEVI Formula Program Guidance on February
 20 10, 2022, and has updated the guidance annually.
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22 6. Minnesota prepared and provided to the FHWA its State Plans for federal fiscal
 23 years 2023-2025 describing how it intended to use its share of funds to carry out the NEVI
 24 Formula Program. Minnesota submitted the following required annual plans: *2022 Minnesota*
 25 *Electric Vehicle Infrastructure Plan, July 2022; 2023 Minnesota Electric Vehicle Infrastructure*
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1 *Plan, July 2023; and 2024 Minnesota Electric Vehicle Infrastructure Plan, August 2024. All*
 2 *three plans included the following content: 1) Introduction; 2) State Agency Coordination; 3)*
 3 *Public Engagement; 4) Plan Vision and Goals; 5) Contracting; 6) Existing and Future*
 4 *Conditions Analysis; 7) EV Charging Infrastructure Deployment; 8) Implementation; 9) Civil*
 5 *Rights; 10) Equity Considerations; 11) Labor and Workforce Considerations; 12)*
 6 *Cybersecurity; and 13) Program Evaluation. Plans submitted in 2023 and 2024 also included a*
 7 *summary of changes and updates from the previous year. In the 2024 update, MnDOT*
 8 *summarized the initial request for proposals, including the conditional awards. The 2024*
 9 *update also outlined round 2 timeline, which included nominating I-90 as an alternative fuel*
 10 *corridor. Beyond alternative fuel corridors, MnDOT described the purpose for the Electric*
 11 *Vehicle Infrastructure Needs Assessment to identify priorities to complete a statewide fast-*
 12 *charging network.*

15 7. The FHWA approved Minnesota's State Plans in letters dated September 14,
 16 2022, September 29, 2023, and November 15, 2024 ("State Plan Approvals"). Each letter
 17 explicitly stated that "[w]ith this approval, Fiscal Years [2022 to 2025] funds are now available
 18 to Minnesota for obligation."

19 8. The approved NEVI formula program funding for Minnesota included the
 20 following, Fiscal year 2022: \$10,089,418; fiscal year 2023: \$14,518,786; fiscal year 2024:
 21 \$14,518,886, and fiscal year 2025: \$14,518,899.

23 9. Over five years (federal fiscal year 2022 through 2026), Minnesota expects to
 24 receive and invest about \$68 million from the NEVI Formula Program. MnDOT is responsible
 25 for administering the NEVI Formula Program funds in Minnesota. The NEVI Formula
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1 Program funds must first be used to build out a state's Alternative Fuel Corridors (AFCs) with
 2 fast charging stations as described in FHWA Final National Electric Vehicle Infrastructure
 3 Standards and Requirements. As of October 2024, I-35, I-94 and I-90 are AFCs for EV
 4 Charging in Minnesota. MnDOT has included approved NEVI funds as a set-aside in its State
 5 Transportation Improvement Program (STIP). The 2025-2028 STIP includes all \$68M
 6 Minnesota is expected to receive. When individual projects are identified, funds are broken out
 7 from the set-aside, reviewed through MPO processes, modified in local Transportation
 8 Improvement Plans (TIPs) and the STIP, and federally obligated. As of January 10, 2025, 19
 9 projects have been federally obligated. Once projects are federally obligated, MnDOT follows
 10 a competitive grant process which includes a formal Request for Proposal (RFP) process.
 11 Round 1 RFP was opened December 2023 and closed April 2024. Round 1 resulted in 12
 12 executed contracts to build 12 EV charging stations. All projects are continuing to complete
 13 work and incur costs. Construction of these stations is expected to begin in Summer 2025. A
 14 second RFP was opened October 2024 and closed January 2025. In April 2025, MnDOT
 15 awarded an additional 12 conditional awards to build an additional 12 EV charging stations.
 16 MnDOT is taking steps towards executing contracts for these projects, which will result in a
 17 total of 24 fully executed contracts in summer 2025. As stated previously, only 19 of these 24
 18 projects have federally obligated funds. Just prior to completing Metropolitan Planning
 19 Organization (MPO) process for five of the Round 2 projects, the NEVI program was
 20 suspended, and those processes were canceled. To fulfill MnDOT's commitment to its Electric
 21 Vehicle Infrastructure Plan, state funds were identified to move forward with Round 2
 22 conditional awards. With expectation of \$68M, Minnesota completed an Electric Vehicle
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1 Infrastructure Needs Assessment which resulted in the identification of future NEVI projects
2 throughout greater Minnesota. These projects are currently on hold.

3 10. On January 20, 2025, President Trump issued an Executive Order (“EO”)
4 entitled Unleashing American Energy. Section 7(a) of the EO directs all agencies to
5 “immediately pause disbursement of funds appropriated through” the IIJA, “including but not
6 limited to funds for electric vehicles charging stations made available through the [NEVI]
7 Program.”

8 11. On February 6, 2025, the Minnesota Department of Transportation received a
9 letter from Emily Biondi, the Associate Administrator for the Office of Planning, Environment
10 and Realty in the FHWA, with the subject “Suspending Approval of State Electric Vehicle
11 Infrastructure Deployment Plans.”

12 12. The February 6 letter informed State Transportation Directors that the new
13 leadership of DOT “has decided to review the policies underlying the implementation of the
14 NEVI Formula Program” and was therefore rescinding NEVI Formula Program Guidance.

15 13. The February 6 letter further claimed that FHWA “aims to have an updated
16 draft NEVI Formal Program Guidance published for public comment in the spring” and that
17 the Agency “will publish updated final NEVI Formula Guidance that responds to comments
18 received” after the public comment period has closed.

19 14. Finally, the FHWA informed the Minnesota Department of Transportation that
20 it would be “immediately suspending the approval of all State Electric Vehicle Infrastructure
21 Deployment plans for all fiscal years” and prohibiting future obligations “under the NEVI
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1 Formula Program until the updated final NEVI Formula Program Guidance is issued and new
 2 State plans are submitted and approved.”

3 15. The February 6 letter therefore made clear that Minnesota would not have
 4 access to the \$42.8 million in FY22-25 funds] which had been made available to Minnesota
 5 through its State Plan Approvals. FHWA has further given the Minnesota Department of
 6 Transportation no sense of how it can apply for the remaining \$14.5 million it expected to
 7 receive for FY 2026.
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9 16. The Minnesota Department of Transportation relied and acted upon the
 10 FHWA’s statutory obligation to provide NEVI formula funding consistent with the IIJA’s
 11 requirements. MnDOT has \$10.8 in obligations for the NEVI program. This includes 19 EV
 12 charging locations. MnDOT is relying on FHWA to fulfill reimbursement of existing
 13 obligations to not disrupt current financial commitments. Without FHWA payment, MnDOT
 14 does not have sufficient state funds to cover the EV charging infrastructure in the Alternative
 15 Fuel Corridors of I-35, I-90, and I-94. MnDOT has contractual obligations for 12 projects
 16 totaling \$9,916,604. An additional seven federally obligated projects are near contract
 17 execution for projects worth a total of \$7,496,854.26. In addition to the cost of these projects,
 18 significant work has been completed by MnDOT, public utilities, local municipalities,
 19 stakeholders and grantees to get to the point of contract execution. Should any one of the
 20 three partners (federal, state or grantee) back out at this time, it will result in a considerable
 21 waste of public and private resources. In Minnesota, the majority of the work to establish
 22 replicable and accountable procurement and implementation frameworks for this program
 23 has been done, and the next step is to construct the tangible benefits for the public.
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17. Transportation is the largest source of carbon emissions in Minnesota. The state is seeing more frequent extreme weather events, drought, smoke from forest fires and potential loss of several species due to warming rivers and lakes. To mitigate the impacts of climate change, MnDOT set interim GHG emissions targets in the Statewide Multimodal Transportation Plan for 2025, 2030, 2035 and 2040. The Minnesota legislature updated the state goal to include interim targets, which align with the Statewide Multimodal Transportation Plan and the Climate Action Framework. To decrease transportation sector GHG emissions, Minnesota needs to invest in a range of strategies that include increasing electrification, increasing travel options and low carbon infrastructure and systems management. Suspension of the NEVI funds and rescission of Minnesota Electric Vehicle Annual Plans put the state's ability to meet climate goals at risk. MnDOT intends to build out the designated fuel corridors that meet requirements as a part of 23 CFR 680. Minnesota recognizes the alternative fuel corridors do not provide a complete EV charging network. MnDOT is preparing for the shift from internal combustion engine (ICE) transportation to EVs and other zero-emission vehicles (ZEVs) to meet statewide carbon reduction and EV targets. To fully understand this, MnDOT needs to complete an existing conditions and analysis of the number of charging stations needed to support the targeted level of EV adoption across the state. MnDOT finalizing an Electric Vehicle Infrastructure Needs Assessment to identify gaps in EV infrastructure. MnDOT created this plan to prioritize how NEVI funds would be use beyond alternative fuel corridors. The draft plan identifies that EV charging infrastructure needs to support long-distance travel throughout Minnesota. Further, the plan identified 83 locations throughout Minnesota's trunk highway network for future charging infrastructure. Across those 83

1 locations, Minnesota estimates needing 264-470 150kW ports. Each port is estimated to
 2 \$1,100 / kW, with an estimated buildout cost of \$44 - \$78 million. Without NEVI funds this
 3 infrastructure will be challenging to build. In round 2, MnDOT is planning to apply \$4.7
 4 million in state funds to complete the alternative fuel corridors. Applicants and grantees have
 5 expressed concerns about the uncertainty of funding and being reimbursed. Minnesota expects
 6 challenges in securing future vendors to participate in the NEVI program.

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 8 I declare under penalty of perjury under the laws of the United States that, to the best of
 9 my knowledge, the foregoing is true and correct.

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 19 DATED this 10th day of July, 2025, at St. Paul,

20 Minnesota.

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 23 James Cownie